

QUESTION NO.	FREQUENTLY ASKED QUESTIONS	ANSWERS
1.	Has there been a change in wording from 'hire safety-sensitive employees' to 'perform' safety-sensitive duties' in reference to pre-employment testing?	Yes, the word hire has been removed.
2.	Many rural collection sites are not available 'after hours.' If I go to a hospital emergency room the cost will be three times higher. How do I justify the cost?	When a drug and or alcohol test is required, an employer must ensure that that tests actually takes place. The cost of the test cannot be a reason for not conducting a drug and or alcohol test. The cost should not be excessive because the majority of all tests should be conducted during normal business hours.
3.	Can I carry a safety-sensitive employee who is unavailable for testing in the current draw period over to the next random draw period	<p>Yes. If a safety-sensitive employee is away for an extended time period due to military duties, how do I handle the situation when he returns?</p> <p>If you take him out of the random pool and more than 90 days have elapsed you must require that individual to submit to a pre-employment drug test. If you kept that individual in your random pool, no further testing is required.</p>
4.	Am I required to do follow-up testing for 12 months?	Employers are required to conduct follow-up testing as directed by the SAP. The SAP, at a minimum, must direct that 6 follow-up tests take place during the first year following the employee's return to safety sensitive duties. It is important to note that the SAP establishes the number and frequency of follow-up tests and that follow-up testing can last up to 5 years.
5.	Can you explain the 90-day issue in respect to safety-sensitive employees being out on extended leave?	See question 4.
6.	Additional questions concerning the 90-day issue resulting from confusion between pre-employment and extended absences issues.	See question 4

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7.	Are there any prescription drugs that will cause an adulteration?	No. The Department has been unable to note any prescription medications, the ingestion of which can cause a urine specimen to be reported by a laboratory as adulterated.
8.	Must I perform follow-up testing?	An employer, who returns to duty an employee following a violation of DOT's drug and alcohol testing rules, must adhere to the follow-up testing plan as directed by the SAP.
9.	What happened with Delta Airline and the reversed lab findings?	The problems at the laboratory were human implementation errors, now corrected, involving the reading of results and the documentation and reporting of those tests. Because test results were misread, specimens were reported as substituted. Upon investigating these errors, the Department supported cancellation of these results.
10.	Who is responsible for the cost of the SAP? All issues related to costs and who pays for services is left for the employer and employee to decide.	Payment of SAP evaluations and services is left for employers and employees to decide and may be governed by existing management-labor agreements and health care benefits.
11.	How would the employer know if the MRO has verified a positive result?	The MRO is required to immediately notify the employer when he or she verifies a drug test as being positive.
12.	How does the FTA treat drivers convicted of DUI while off-duty?	As long as the individual has a valid driver's license the FTA does not have any regulations concerning this matter.
13.	What does DER stand for?	Designated Employer Representative.
14.	Is it appropriate to have in your policy that a positive will result in termination?	Yes.
15.	How do you identify if a SAP is certified?	While the rules do not require the SAP to be certified, the SAP must have specific credentials and appropriate training. SAP's must maintain credentialing and training documentation and make them available to employers upon request.
16.	Which Internet site has the full text of Part 40?	www.dot.gov/ost/dapc/ .
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17.	Can I use e-mail/internet to communicate test results?	MRO's may convey test results by fax, courier, mail, or electronically transmitted legible image of Copy 2 or the written report (for all

		results) or by computer data file (for negative results, only). All test results must be reported in a confidential manner. Email and Internet may be used if these requirements are met.
18.	I have heard about a sample policy manual, when will we see that?	The best practices and manual and implementation guidelines should be available by the end of February 2002.
19.	Are there any standards for when you must inform a prospective safety-sensitive employee that he/she is to have a pre-employment drug test?	No, there is no time-period specified in the regulations for when you must inform an individual that they are required to take a pre-employment drug test.
20.	Is a 'written' negative result of a pre-employment drug test required before starting safety-sensitive duties?	A fax of a negative result is acceptable when in need of immediate results.
21.	Is it considered to be a 'good-faith effort' if only one attempt to contact a previous employer is made in 30 days?	Yes, there is no requirement for a follow-up attempt.
22.	Isn't 'due-diligence' required in trying to contact a previous employer.	One attempt is sufficient. Record the attempt.
23.	Is a potential employer required to wait those 30 days, if the potential employer has not received a response from the previous employer?	No.
24.	If a notification indicating a previous positive is received 45 days after the request, after hiring the employee, what do I do?	If they have completed a follow-up program, then nothing is required. If they did not complete the program as specified by the SAP then they must complete the program.
25.	How will I know what the specifics of the program specified by the SAP for the potential employee.	The previous employer must inform you.
26.	If a former employee had tested positive and information about that former employee was requested of you, what do you send to the potential employer?	A suggestion would be to send a form letter, but there is no specific format required.
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27.	Are volunteer safety-sensitive employees exempt from the requirements?	'True' volunteers, who receive no remuneration (college credits, personal use of vehicle, etc.) and are not required to have a CDL, are exempt.
28.	If my collection site is not open on weekends and I conduct service on the weekends, what do I do?	Required to find some means whereby you can test. Need to close that gap (emergency room, etc.)

29.	What if an employee is on-call or off-duty? Does law allow them to be called in to be tested?	No
30.	What if the employee shows up at work? Can I test them?	Wait until they punch/sign in.
31.	What if a person is not available (away) when their name is drawn from the random pool and they are picked to go for test?	Do the test when they return, unless a new random list has been drawn. A new random draw ends the requirement to test any previous selections.
32.	I am a small property who subcontracts operations from a national provider. The national provider has my few subcontractors in their large pool. How can I assure randomness and appropriate random test rates.	You are responsible for your contractors.
33.	If you are a small provider and do quarterly random draws, are you required to spread the selections throughout the quarter?	Yes
34.	What are the positive random drug rate and the number of positives?	1.0% and approximately 1,200 random positives.
35.	If I am a small provider and run a small percentage of my service on Saturday, do I need to random test on Saturday?	The percentage of tests should be approximately the same as the percentage of service; you should do an occasional test.
36.	Do I need to post-accident test if the light-rail vehicle was taken out of service?	Yes, if immediately taken out of service.
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37.	What does phrase mean 'each covered employee operating the vehicle at the time of the accident'? Why 'each' employee?	When more than one operator. This pertains mostly to rail.
38.	Must I test if vehicle is disabled but driver was obviously not at fault?	No, not if the operator can be completely discounted. Also, not if vehicle can be fixed at scene.
39.	What if the driver can be discounted but there was a fatality?	If there is a fatality than it is a requirement to post-accident test drug and alcohol test.
40.	Is FTA stating that 8 hours following an accident an employee will not have alcohol in their system?	No, FTA is saying that the alcohol testing process must be ceased.
41.	What if, following a positive result, an employee puts	This has nothing to do with the FTA requirements.

	self in a program, goes to a treatment center, etc.	
42.	Is a consent form for reasonable suspicion required?	No, consent forms are not allowed. You need to document, but not get a consent form.
43.	Can a grantee ask to see a contractor's D&A records?	Yes, they can.
44.	How long must individual records be kept?	Positive test results: 5 years Prior employers requests 3 years Training records 2 years Negative testing results 1 year
45.	Are electronic copies of records allowed? Can you scan a paper copy and keep the file?	Yes
46.	What is the time frame for when the 1-hour of training must be completed?	Nothing in regulations states when training must be completed and nothing states that you are required to hold off hiring an employee until training has been completed.
47.	What does HHS stand for?	Health and Human Services
48.	Is validity testing a new requirement?	Yes
49.	Is there any additional expense to the employer for validity testing?	Check with your individual lab.
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50.	How can you accept a dilute positive test result, but are not required to accept a dilute negative.	A dilute positive is a positive test result.
51.	Will we get 'dinged' if we do not address the issue of dilute negatives in our policy?	Part 40 states that you must address this issue and it must be part of your policy.
52.	What if a cancelled test comes back with a redesignate of A to B and there is not sufficient specimen to do a split.	Can't do anything.
53.	Does a cancelled random test count toward the 50% requirement?	No, make it up on the next random draw.
54.	Is an employee refusing to sign the CCF a positive?	Not a refusal if specimen has been collected. If not collected, then it is a refusal.
55.	Must you state in your policy, that it is not a refusal to sign after a specimen has been collected?	No

56.	What if the collection site fails to ask the donor to sign the CCF?	Fatal flaw
57.	At what point do you get a medical reason why there is an insufficient or no specimen.	After 3 hours and 40 oz. (spread reasonably). Collector calls employer who contacts MRO. MRO finds physician.
58.	Can employee continue to work if MRO has not verified, because there has been no contact between employee and MRO?	Yes, employee would continue unless there was a stand down waiver approved by FTA.
59.	What does it mean that employers are required to provide SAPs who are readily available?	No standards set...perhaps within 4 hours away?
60.	My SAP schedules the follow-up tests, is this OK?	Would be better for the SAP to 'suggest' a schedule. Regulation states that it is up to the employer to make the scheduling determination.
61.	I'm in a rural area...it is difficult to find a SAP.	If SAP is only game in town, could be a financial benefit.
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62.	The regulations state that an employee may not have alcohol for 8 hours following an FTA defined accident. What if the employee had already had the post-accident test?	If employee has had the post-accident test, is not on duty and is more than 4 hours prior to being on duty, he/she may consume alcohol.
63.	What if the testing process is underway and the donor receives a call telling him that there is a medical emergency involving his son, and the donor leaves to attend to his son.	Regulations state that the donor may not leave once the process has started.
64.	How long must a proof of receipt for the policy be kept?	2 Years
65.	Can you ask the MRO to see the 5% of negatives that the MRO is required to review?	Yes, you have the responsibility to make sure the vendor is doing what he is required to do.
66.	If you see a test that has a correctable flaw, can you ask the MRO if he/she has reviewed it?	Yes, the MRO must review all the correctable flaws and at least 5% of the negatives.
67.	Who provides collector training?	SAPA, DATIA, 'local' training agencies.
68.	Can you perform a road test prior to receiving a verified pre-employment drug positive?	No
69.	If the auditors pull a sample of testing records and	The auditors use a statistically valid representation of test results in

	there are a high percentage of bad records, will they expand the list and pull more?	accordance with acceptable statistical methods.
70.	If a potential employee refuses to take a drug pre-employment test, is this a refusal?	No.
71.	Previous employer check: Is checklist sufficient to show that an attempt was made?	It is better to have a copy of the letter.
72.	Is there a plan for a national or statewide database of CDL D&A positives?	Not currently.
73.	Can an employer have tougher rules for receipt of previous employer data?	Yes, but it must be under the employer's own authority.
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74.	Can I require a consent form for pre-employment?	No, but can use notification form to track date, time, etc.
75.	Isn't the wording in the regulations 'Release of Liability', not 'Consent'?	The actual wording is 'you must not require an employee to sign a consent, waiver of liability, or indemnification agreement' (40.27).
76.	Do you keep previous employer results in the employment file or the Drug and Alcohol file?	Drug and Alcohol file.
77.	What if previous employer did not have a Drug and Alcohol program?	Only need to check DOT-regulated employers within the last two years.
78.	How long do you keep a list of who was pulled?	2 Years.
79.	Do I need to put 50% and 10% (required random testing rates) in the policy?	Yes, put in 'minimum of 50% and 10%'.
80.	If clerical person is on-call as an operator, can they be called for a random alcohol test?	Somewhat your judgment, but must be about to perform a safety-sensitive duty.
81.	I receive the random draws, can I pick a day for testing an employee when it is not busy or they are not in training?	Yes, as long as you show no pattern and cover all times of service.
82.	Can a responding supervisor make determination that an operator can be completely discounted?	Yes, based on information available at the time.
83.	Can the SAP recommend a Return-to Duty test prior to the employee completing the educational program?	Yes.
84.	What if the SAP returns an employee to work prior to	It's a positive.

	employee completing educational program and that employee tests positive for random drug test.	
85.	Why does FTA not require certification of MRO as they do with SAP?	Unknown.
86.	If policy states that there must be a retest for a dilute negative, must this be a DOT test?	Yes
87.	What test should be checked on CCF?	Same as original test.
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88.	If there is an accident meeting FTA thresholds and the driver takes a post-accident test, can the FTA cannot restrict that driver from operating until a verified positive result is received.	No, cannot restrict without an approved stand-down.
89.	If lab result is positive, but is verified negative by the MRO, is this a negative?	Yes, MRO makes the final determination.
90.	Is the SAP responsible for schedule of follow-up tests?	No, the actual time and day are determined by the employer.
91.	If you are hiring an individual who had been in a treatment program with a previous DOT-regulated employer, how do you get the information on their participation in this particular program?	Potential employee signs a release allowing access to the information.
92.	Are individuals providing maintenance covered under a vehicle warranty covered?	No, warranty work is not covered.
93.	Within the policy, does the drug policy need to be separate from the alcohol policy?	No, can be separate or together.
94.	Can the Drug and Alcohol policy be a part of the overall personnel policy that has been adopted by the governing board?	Yes
95.	Within your policy, can you refer to a facility rather than an individual SAP?	No, you must have an individual name.
96.	At the state level, are you required to have on hand the various certifications for your 5311s?	It is up to you, not a requirement.
97.	Should those employees who may drive a company car but never a revenue vehicle, be tested?	No, only if they drive a revenue vehicle or are otherwise safety sensitive.

98.	What if a previous DOT-regulated employer reports spurious information in the record check? For example, the previous employer reports a previous employee as positive due to a previous conflict or situation.	If the new employer is notified by the potential employee of this situation, the new employer should receive specific permission from the potential employee to receive the drug test CoCs from the previous employer.
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99.	Why didn't FTA and FMCSA coordinate on language in their regulations, specifically on the term return-to-duty?	The FTA Drug and Alcohol Program Manager came to us from FMCSA so there was obviously coordination by default. A good faith effort was made by DOT agencies to coordinate the RTD and SAP language per Part 40 but in some cases the specific DOT agency had to make some changes to suit their specific operating environment. In areas where there are differences between Part 655 and Part 40, Part 655 overrides Part 40 for transit grantees.
100.	Can Motor-Carrier and Transit be in the same random testing pool of a consortium?	Yes, because both agencies have the same random testing rates.
101.	To make a program random all pulls for a particular period should all employees be sent on the same day?	No.
102.	If a random list expires and someone was not tested do they go back into the pool?	Yes, stop trying to test them beyond the end of the period and put them back in the pool.
103.	Should employees clock in before employer notifies them to go to a test?	Yes, if employer requires a person to clock, the employee should be clocked in before being notified of an alcohol test.
104.	Should the pull-list be updated before each draw even if the draw is done weekly?	Yes.
105.	What MIS report does a test go into if a 4 th quarter pulled employee isn't tested until early January the next year but before the first quarter pull of the new year?	They go in the MIS report of the year in which they were pulled.
106.	Are DAPM/DER's considered safety sensitive?	No, unless they perform a safety sensitive function.
107.	If someone is in a decision making position at an accident are they safety sensitive?	Only if they perform a safety sensitive function, that does not include making a post-accident determination.
108.	If a DAPM does perform safety sensitive duties should their drug test request, if pulled, be mailed and taken	Yes, that's a good idea as it avoids a clear conflict of interest.

	care of by some else in the organization?	
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109.	If an employee that rarely does safety sensitive, such as a secretary, gets pulled for an alcohol test but never does safety sensitive during that pull period, does she get tested anyway?	No.
110.	At collection sites should the time of arrival be noted to go along with notification time and test time?	This is not required by Part 655. However, it is a good practice as it shows the interval of time between arrival and testing and could be used to measure the performance of the collection site and/or the employee in transit to the facility. Also, capturing the time when the employee returned to work would be a good practice and close the loop on all time involved in the entire drug testing procedure.
111.	Does FTA have any recommended time for expiration on reasonable suspicion training?	No, just keep the documentation.
112.	In instances of post accident testing after-hours where a drug test could be given while waiting for the BAT to arrive, can the drug test be given first?	Yes, but document that you were waiting for the BAT.
113.	Marijuana levels tend to fluctuate in the body fat. This complicates the follow-up process in that an employee could be clean through the process but tests positive after a previously negative test. Can the MRO account for this?	The MRO is involved in the process to make just such medical and scientific determinations.
114.	Is it alright to use the Emergency Room, where any post accident medical treatment takes place, for the testing facility?	Yes.
115.	Concerning follow-up testing: if the prescribed number of tests is not completed in the prescribed period, what's the determination?	The tests should be continued into the next year, until the recommended tests are completed.

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116.	If someone completed ½ a treatment program with a previous employer, would the new employer start a new SAP evaluation or would the employer get credit for the portion of the treatment completed?	SAP should evaluate the employee and determine whether to start over or give some credit.
117.	In serious accidents should grantees ever release D&A testing results to the media?	Get consent from the employee who, if he is negative, will probably be eager to have his/her name cleared. Otherwise, protecting the individual's right to privacy wins out over the media.
118.	Have the MIS forms changed this year?	They haven't substantively changed this year from last. However, there will be stratified data collection this year where only a representative sample will be collected thereby reducing the burden to the transit industry.
119.	What are the options on dilute negatives? Should the grantee issue a policy statement?	Employees need to know. Make it clear in your policy.
120.	Was a lab that had sufficient sample in bottle A and nearly sufficient in bottle B, correct in refusing the test.	They were wrong not to test.
121.	The fact that cancelled tests don't count can be significant in a small system achieving its 50% random testing level. Should additional tests be scheduled to make up for the shortfall?	The agency needs to do a valid random selection AND/OR over sample to take the cancelled tests into account.
122.	In the medical review process, 3 to 5 days are granted to determine medical explanation. Can the employee go out and shop for a doctor that will give him an explanation?	The physician needs to be acceptable to the employer.
123.	If an employer has a problem with MRO canceling actual positives, what recourse does the employer have?	Get another MRO.
124.	Is the 5 days allowed for a physical in the verification process, business or calendar days.	5 business days.

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125.	Can the employee choose his own SAP?	No, they must choose an SAP off the employers list (which may be just one).
126.	Is USDOT considering the cost of treatment programs, which can last up to 5 years?	The employer can specify in their policy that the cost of the treatment come out of the employees pay.
127.	What happens if the specific SAP assigned to an employee has left the SAP firm.	Document the change and continue with another SAP in the same firm. Most firms will ensure continuity in treatment and cases.
128.	Are 5311 maintenance contractors exempt? Are small urban (<200,000 UZA) maintenance contractors exempt under Part 655?	Yes. Yes.
129.	Where is USDOT in getting towards a database of “dirty” prospective employees list (employees who tested positive and never completed a treatment program)?	FMCSA has done a couple of states. The background check is a small step in that direction; however, there are myriad issues to create a database containing social security numbers with potentially damaging information associated.
130.	What is the urine collector 5-year refresher training start date?	If already certified, it’s 8/1/01. If certified after, it’s the date of the certification.
131.	What happens if an outdated Federal CCF is used?	If an expired form accompanies a specimen to the laboratory and is not corrected with a Memorandum for Record, the specimen must be rejected for testing and reported as such by the laboratory.
132.	Our collection site was given federal CCF forms by the transit agency to use for all their drug tests. Some of their employees being tested are clerical people. Shouldn’t the clerical people be tested using a non-federal form?	<p>If the clerical people are called upon to perform safety-sensitive duties (i.e., substitute bus driver), they are considered to be safety-sensitive. However, if they are not performing safety-sensitive duties during the period of the draw, the drug test is on a federal form and a non-federal form for alcohol testing.</p> <p>The company must have a policy that clearly informs the employee that this alcohol test is under company’s authority and not due to a federal regulation.</p>

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133.	In a previous seminar the presenter mentioned a device called “The Urinator” for cheating on drug screens. With all the information readily available on the Internet, does the DOT plan to address the products to pass a drug test?	<p>For those who are not familiar, “The Urinator” is a device that is worn under the clothing to provide a drug free substituted sample at the proper temperature. This device can be found selling on the Internet for under \$200.</p> <p>The federal government seeks to balance employee’s fourth amendment rights against the rights of the public for safety. This is why observed collections are only allowed under specific conditions.</p>
134.	How do I find a consortium?	Check with your peers. Conduct Internet searches.
135.	Our attorney wants us to include a blanket release statement with the application package. Is this something we should use?	Blanket releases are specifically prohibited under the new regulations.
136.	Is a post accident test required when a bus that slides off the road and requires a tow to get back on the road, but can be driven once it is on the road?	No.
137.	Can you take safety sensitive employees on a vehicle to observe road tests before negative test result has been received?	Yes.
138.	Is a verbal negative from the MRO ok?	Yes, as long as the paperwork follows.
139.	What constitutes a refusal in the pre-employment testing process - at the point where an ID has been presented?	Yes, if the employee walks away without having presented ID, it is not a test refusal.
140.	What if a previous DOT-regulated employer reports inaccurate information?	They are culpable. New employer just needs to make a good faith effort.
141.	Why is it called a pre-employment if the testee is already an employee?	Because return-to-duty denotes a post-positive situation.

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142.	Can employees on leave or itinerate employees be left in the random pool?	They can be left in the pool but that pollutes the pool with people who cannot be tested if they are picked. Too much of this will lead to not meeting the 50% random drug testing annual threshold unless the agency can accurately determine the amount over sampling needed.
143.	Are Drug and Alcohol test records part of the public record? What about of the clinic is subpoenaed?	No, Part 40 specifies strict confidentiality.
144.	If an employee is selected and tested in 2001 and the test result is received in 2002, in what MIS report year should that be reported?	Count it in 2001. They go in the year in which they actually submitted to their test. The MIS figures take several months to be developed and the previous year submissions aren't due until April.
145.	Is it OK to test alternates?	Yes, but try to get the actual randomly picked employees first. One has the entire test period in which to get them tested.
146.	Transit agency has determined that anyone issuing instructions such as dispatchers are safety sensitive. Does the DAPM have to monitor the performance of management personnel and notify them while they are performing safety sensitive duties for random alcohol testing?	Yes, but if you can't get them during the testing period, just document it.
147.	Attendee asserted that DOT has said for 10 years that if one is in the pool and is picked for alcohol, one must be tested even if they do not perform safety sensitive during the testing period.	No, that is not what Part 654 stipulated and it still holds for Part 655.
148.	If a transit system is only operational M-F, do they need to do weekend tests?	No.
149.	Where can grantees get reasonable suspicion training?	Video and manual available from the FTA OSS Clearinghouse.
150.	In an accident when an employee is at fault, do you still need to get consent for post-accident testing?	Yes.
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151.	Whose responsibility is it to connect the current	In the SAP referral, the employer should notify their SAP to get

	employers SAP with a previous employers SAP in a case where an employee is hired and then it's found that they didn't finish rehabilitation?	information from the previous SAP based on information provided by the employee.
152.	You are a previous employer and you find that a new DOT regulated employer has hired an ex-employee, who never went through a treatment program. However, you never received a background request form. Do you notify the new employer on your own?	No, only provide information upon receiving the background request form.
153.	Can it be assumed that a fatal flaw concerning insufficient amount has to be a deficiency of the collection site.	No, could have occurred in transport to the lab.
154.	There was a situation where the MRO didn't contact the DER after a no-contact positive.	Grantees need to provide oversight of the MRO to make sure that they've studied and are aware of new regulations.
155.	Does a prior employer have to get the SAP evaluation and paperwork to the new employer when they receive a release?	Yes, the new employer/ex-employee shouldn't have to redo the SAP process that's already been completed. All pertinent information should be provided.
156.	A statement was made that the SAP cannot request information from the MRO without the employee release.	Under Part 40.293(g), they can get this information in order to make an appropriate determination.
157.	Are 5311 maintenance contractors exempt?	Yes.
158.	Can grantees test for more than the 5-drug screen?	Yes, but they need to do a separate collection process.
159.	What's a PIE?	Vendors who are blacklisted by USDOT for serious non-compliance associated with egregious errors. The LA MRO who was not an MD was used as an example.
160.	If a prospective employee has a pre-employment positive test, does the transit system still need to provide an SAP referral?	Yes, just a referral.
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161.	What is FTA's stance on saliva swabs in rural areas?	It's fine to use as a screening mechanism but swabs need to be confirmed with a BAT. That confirmation is not the same as the BAT reconfirm which has to be done within a half hour.
162.	What should happen when the DER is pulled for a	Ideally, a process should be set up by the consortium/selector for the

	random test?	notification to go to someone other than the DER in order to avoid a conflict of interest. Transit systems should try to make the DER non-safety sensitive.
163.	Is there a timeframe for the new SAP training?	Yes, same as MRO training timeframe.
164.	When referring to collector proficiency, real-time means face-to-face?	Yes.
165.	Do the BAT initial proficiency test have to have various results such as the 5 mock drug tests?	No, straight ahead tests because there are not the same variables as those involved in urine collection.